

REMARKS

Applicant requests reconsideration of the above-identified application in light of the amendments and remarks described herein. Claims 1-7, 11-14, 16, and 25-31 were pending in this application, with Claims 27-31 being withdrawn from consideration by the Examiner. Claims 27-31 have been canceled, Claims 1, 25, and 26 have been amended. Therefore, Claims 1-7, 11-14, 16, 25, and 26 are currently pending in this application.

Claims 1-7, 11-14, 16, 25, and 26 have been rejected. Specifically, the claims have all been rejected under 35 U.S.C. § 103(a).

Applicant respectfully submits that all claims are now in condition for allowance. Accordingly, applicant requests reconsideration and allowance of all claims.

Applicant's Statement of the Substance of Interview

A telephone interview was held on August 2, 2007, in view of the Office Action mailed March 29, 2007. Attendees of the telephone interview included Examiner Jila Mohandesi, applicant William Rademaker, and applicant's representative Emily Peyser. Applicant thanks the Examiner for her time spent during the interview.

Applicant received the Examiner's Interview Summary, mailed on August 8, 2007. As stated in the Interview Summary, Claims 1, 25, and 26 were discussed during the interview. Although no agreement was reached by the parties with respect to Claims 1, 25, and 26, applicant thanks the Examiner for her time.

Rejection of Claims 1-7, 11, 25, and 26 Under 35 U.S.C. § 103(a)

Claims 1-7, 11, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,808,072, issued to Snedeker et al. (hereinafter "Snedeker") in view of U.S. Patent No. 5,568,866, issued to Grosskopf et al. (hereinafter "Grosskopf"). Applicant disagrees.

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To establish a case of obviousness, the prior art references must teach or suggest all of the claim limitations; there must be some suggestion or motivation, either in the references or in the knowledge of one skilled in the art, to modify the references or to combine the reference teachings; and there must be a reasonable expectation of success. The motivation-to-combine requirement prevents proscribed hindsight reasoning when determining obviousness. *See Alza Corp. v. Mylan Laboratories, Inc.*, 464 F.3d 1286, 1290 (Fed. Cir. 2006) (citing *In re Kahn*, 441 F.3d 977, 985 (Fed. Cir. 2006), and *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1321-24 (Fed. Cir. 2005)).

Snedeker generally describes a snack food assembly including a snack food bag, snack food, and a moist towelette in a sealed enclosure that is coupled to the snack food bag. As described in Snedeker, the purpose of coupling a moist towelette to a snack food bag is to help users "maintain clean fingers and hands" after consuming a snack food (Snedeker, Col. 6, line 64, to Col. 8, line 37).

Grosskopf generally describes a sample package for carrying fluid or powder samples, as well as dental floss, granules, and tablets (Grosskopf, Col. 1, lines 44-49, and Col. 3, lines 49-58), which can be attached by adhesive to a card (such as a mailing card) or product packaging. The Examiner states that the product packaging of Grosskopf is inherently capable of carrying food. Applicant respectfully disagrees.

The Office Action states that Snedeker discloses a food container assembly including a product container, a personal cleaning device carried by the product container, and a food product at least partially disposed within the product container. The Office Action admits that Snedeker does not disclose that the personal cleaning device may be replaced by dental floss. The Office Action cites Grosskopf as teaching attaching a dental cleaning device, such as floss, disposed in a packet (100). The Office Action concludes that it would have been obvious to one

of ordinary skill in the art at the time the invention was made to replace the moist towelette taught by Snedeker with the dental cleaning device of Grosskopf so that the consumer might clean his or her teeth after consuming a product. Applicant respectfully disagrees.

Applicant reiterates and maintains the arguments submitted in the previously filed amendment, filed in conjunction with a Request for Continued Examination on January 12, 2007. In that regard, applicant submits that the claims presented in the previous amendment are not obvious over the cited references, because there is no suggestion or motivation to modify the references or to combine the reference teachings to arrive at a food container assembly, including a product container for a food product, a dental cleaning device carried by the product container, and a food product at least partially disposed within the product container. Neither reference contemplates that a user of the product (*i.e.*, the sample card of Grosskopf or the snack food package of Snedeker) would get food stuck in his or her teeth, requiring a dental cleaning device to dislodge the food or clean the teeth. In that regard, Grosskopf does not contemplate using the sample packages in conjunction with consuming food for user convenience. To the contrary, the sole purpose of the Grosskopf sample packages is for the promotion of products and product sampling (*see, e.g.*, Grosskopf, Col. 1, lines 14-22). In fact, Grosskopf teaches away from the claim language because it would not be sensible to include food with a sample package adhered to a mailing card or other packaging, as such food would spoil in the mail or on the magazine rack.

While Snedeker may contemplate dirty hands as a result of eating snack food, Snedeker does not contemplate that the user would get snack food stuck in his or her teeth. Therefore, applicant respectfully submits that the combination of these references to arrive at the rejection is impermissible hindsight reconstruction.

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Notwithstanding these arguments, applicant has amended Claims 1, 25, and 26 to expedite the prosecution of this application, without prejudice to file one or more broadening continuation applications. Claim 1, as amended, generally recites a food container assembly, including a product container for a food product, wherein the product container is designed and configured to enclose or support the food product and wherein the food product is a prepared food that, when consumed, has a tendency to get lodged between a user's teeth. The assembly further includes a dental cleaning device carried by the product container, such that the user can conveniently use the dental cleaning device to clean the food product lodged between the teeth during or immediately after eating the food product to provide quick and easy dental hygiene for the user at the location of food product consumption. The assembly further includes the food product at least partially disposed within the product container.

Claim 25, as amended, generally recites a food container assembly, including a popcorn container, wherein the popcorn container is designed and configured to enclose or support popcorn. The assembly further includes a dental cleaning device carried by the popcorn container, such that the user can conveniently use the dental cleaning device to clean popcorn lodged between the teeth during or immediately after eating the popcorn at the location of popcorn consumption. The assembly further includes popcorn at least partially disposed within the popcorn container.

Claim 26, as amended, generally recites a food container assembly, including a fast food container, wherein the fast food container is designed and configured to enclose or support fast food and wherein the fast food is of the type sold for immediate consumption and, when consumed, has a tendency to get lodged between a user's teeth. The assembly further includes a dental cleaning device carried by the fast food container, such that the user can conveniently use the dental cleaning device to clean fast food lodged between the teeth during or immediately

after eating the fast food at the location of fast food consumption. The assembly further includes perishable fast food at least partially disposed within the fast food container.

Applicant respectfully submits that the cited references, whether cited alone or in any combination, fail to teach or suggest all of the claim limitations of the currently amended claims. In that regard, none of the cited references teach or suggest the following:

(1) a food container assembly including a dental cleaning device carried by the product container, such that the user can conveniently use the dental cleaning device to clean the food product lodged between the teeth during or immediately after eating the food product to provide quick and easy dental hygiene for the user at the location of food product consumption, and food product at least partially disposed within the product container, as recited in Claim 1;

(2) a food container assembly including a dental cleaning device carried by the popcorn container, such that the user can conveniently use the dental cleaning device to clean popcorn lodged between the teeth during or immediately after eating the popcorn at the location of popcorn consumption, and popcorn at least partially disposed within the popcorn container, as recited in Claim 25; and

(3) a food container assembly including a dental cleaning device carried by the fast food container, such that the user can conveniently use the dental cleaning device to clean fast food lodged between the teeth during or immediately after eating the fast food at the location of fast food consumption, and perishable fast food at least partially disposed within the fast food container, as recited in Claim 26.

In contrast, Snedeker teaches a moist towelette in a sealed enclosure that is coupled to a snack food bag, and Grosskopf teaches samples carried in pouches that can be attached by adhesive to cards or product packaging.

For at least these reasons, applicant respectfully submits that the pending claims are allowable over the cited references Grosskopf or Snedeker, whether cited alone or in combination. Accordingly applicant respectfully requests withdrawal of the rejections to the claims.

Rejection of Claims 12-14 and 16 Under 35 U.S.C. § 103(a)

Claims 12-14 and 16 stand rejected as being unpatentable over Snedeker and Grosskopf, and further in view of U.S. Patent No. 5,524,764, issued to Kaufman et al. (hereinafter "Kaufman"). Applicant respectfully disagrees.

Kaufman generally describes a compact portable package 36 containing dental hygiene items for convenient placement, for example, in a wallet 38.

For at least the same reasons as discussed above with regard to the rejections of Claims 1-7 and 11, 25, and 26, applicant respectfully submits that dependent Claims 12-14 and 16 are also allowable over the cited references, whether cited alone or in any combination. Accordingly, applicant respectfully requests withdrawal of the rejections to these claims.

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CONCLUSION

In view of the foregoing amendments and remarks, applicant respectfully submits that the present application is in condition for allowance. The Examiner is invited to contact the undersigned with any remaining questions or concerns.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Emily C. Peyser", with a long horizontal flourish extending to the right.

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